IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

State of Rajasthan vs. Sohan Ram & Ors.

1. DB Cri.Appeal No.39/1987

Heera Ram vs. The State of Rajasthan

2. D.B.Cri. Appeal No.393/1986

Under Section 378 (iii) & (i) Cr.P.C. against the judgment dated 11.09.86 passed by the Sessions Judge, Jodhpur, in Sessions Case No.120/1984.

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Date of Judgment: 20th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.JPS.Choudhary, Public Prosecutor.
Mr.P.R.Choudhary for the respondents.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

Out of these two appeals, one has been filed by the accused appellant Sohan Ram , Shobha Ram, Sahi Ram and Heera Ram and the other has been filed by the State of Rajasthan, against

these accused persons, being aggrieved by the decision of the court of Sessions Judg e, Jodhpur, in Sessions Case No.120/1984 dated 11.09.86.

According to the prosecution case , 4 accused persons , namely 3 appellants, Sohan Ram , Sahi Ram and Heeram Ram, along with one Shobha Ram (who has been dealt with separately by the trial court), shared a common intention to assault Kana Ram. Out of these accused persons, Sohan Ram had a knife and others had clubs.

According to the prosecution story ,given in the first information report, it was stated that Sohan Ram with knife, and the other accused persons with clubs, assaulted the deceased. This assault was in the background that two- three days before the actual incident of killing, daughter of accused Heera Ram went on the 'Kund' to quench the thirst of her cattle. At that time Budha Ram , s/o the deceased Kana Ram was present and he prohibited her that she should not provide water to the cows from the 'Kund'. But she did not adhere to this request. At that time Budha Ram snatched the bucket from the girl. The daughter of Heera Ram came home weeping. Then Heera Ram called on Kana Ram and scolded him , at that time Kana Ram apologised for this incident. Two days' thereafter, while Budha Ram was returning from school , accused

Shobha Ram , who has been dealt with separately, gave him thrashing and that was said to be the cause of quarrel in between the parties.

On the basis of such information, FIR No.60/84 was registered at Police Station , Bhojasar, under section 302 and 341 IPC on 28.08.84 at 04.00 AM, registering that the actual occurrence had taken place on 27.08.84 at 06.30 PM. On the basis of such report, investigation was conducted, charge sheet was filed. The case was committed to the court of Sessions, for holding trial.

The learned trial court framed charges under Section 302 IPC and in the alternative, under section 302/34 and 341 IPC , against all the accused persons. They denied the charges and claimed trial. At the trial, the prosecution examined 13 witnesses. The accused were examined under section 313 Cr. P.C. who denied the prosecution case and claimed trial.

The learned trial court found that the two eye witnesses PW/4 Bhagirath and PW/8 Ramu Ram are the closest possible relations of the deceased, despite their denial of the relationship. Both these witnesses have been disbelieved on a material part of the prosecution story, wherein both of them exaggerated the prosecution

case by deposing before the court that the deceased was inflicted an injury to his rectum by inserting a club. Thus, the trial court observed that the two eye witnesses, fall in the category of those witnesses, who cannot be said to be completely true witnesses but then the trial court has proceeded to say that it cannot be said that these witnesses were totally false witnesses and observed that they are partly reliable witnesses.

Regarding the 3rd witness PW/8 Ramu Ram, the trial court found that he is an entirely false witness . However, the learned trial court has further proceeded to say that PW/1 Bhola Ram was informed by PW/8 Ramu Ram that his brother Kana Ram has been done away with by the accused persons. PW/1 Bhola Ram and PW/2 Manak Ram have deposed that they were so informed, and in this light,the trial court has concluded that their testimony comes within the definition of res gueste and, therefore, they can be relied on .

Then the learned trial court has proceeded to say that the recoveries of knife and clubs are of no consequence and , therefore, held that no corroboration can be made of the witnesses' statement. However, corroboration has been sought by the medical evidence and contends of the first information report. The trial court, further

held that the prosecution has failed to bring home an offence under section 341 IPC because it cannot be stated that any such attempt was made by the accused to stop Kana Ram from proceeding from any direction, therefore, the accused persons were acquitted of the offence under section 341 IPC. This was also in the background that the learned trial court felt that it is not possible to infer, as to how the incident started. The trial court, was of the opinion that as and when it is not possible to find out the beginning of the story, it becomes very difficult to know the exact picture of the prosecution case and, therefore, acquittal under section 341 IPC was recorded. After having observed this , the trial court came to the conclusion that the nature of injuries, the way prosecution has put forward its case, it is not possible to infer that the accused persons intended to cause the death of the deceased. The nature of injuries and the way the incident has occurred, it is not possible to say that the accused are guilty of culpable homicide, not amounting to murder, as defined in exceptions of Section 300 IPC and thus, convicted the accused appellants under section 304 -II IPC and sentenced them to 3 years' R.I.

Arguing the State appeal , the learned counsel for the State submitted that it was a clear case , where an offence under section 302 IPC has been made out, because the deceased has been

mercilessly killed by the accused and has caused such injuries, whereby fractures have been caused in tibia and fibulla of the right side and fingers of the right hand. When such attack is made, which results into few fractures and 14 injuries, it cannot be said that there was no intention of causing the death. When four accused persons, make an assault on an unarmed person, and cause so many injuries, then there cannot be any thing except the intention of causing the death of the deceased.

The enmity in between the parties breaded on account of a trifle matter, where two children fought once, and then that dispute got repeated when on way from school again the children fought. If on minor things, major consequences happen, then they cannot be but one offence, and that is murder, which can be deduced and derived and the learned trial court should have convicted the accused appellants under section 302 IPC and not under section 304-II IPC.

Replying the arguments advanced on behalf of the State, the learned counsel appearing for the accused appellants stressed that, to cover the clauses under the definition of murder, as given in Section 300 IPC, the case has to be clearly made out under its

illustration. As is clearly seen that the prosecution has not been able to establish as to how did the occurrence start, because the witnesses have not been held to be fully reliable witnesses, it cannot be said that the prosecution story can be relied on, in its entirety. That being the position, the trial court was right in inferring that offence under section 341 IPC has not been made out. After this , when this has not been deduced by the learned trial court that it was not a case of intended murder, but the accused persons only wanted to show their resistance to the attitude of the complainants, wherein children have fought on such trifle matters that an ugly turn has taken place.

We have heard the learned counsel and have looked into the record.

When admittedly the prosecution has produced such witnesses, who have been held to be not entirely believable, then their depositions have to be branded as scruplessly zealous. If injuries like the one to the rectum, has been falsely introduced by the prosecution, then it cannot be said that there was no false acquisition as levelled by the prosecution, in the statement of the witnesses. The fractures which are occurred are all on non-vital parts and in that background, when the trial court was faced with the difficulty as to

how the incident happened, then it was not possible to arrive at a conclusion as to the gravity of offence. There was a lurking doubt in the mind of the trial court. Such doubt cannot be said to be baseless, or a fragment of an imagination, and in that background, if we see the observations of the trial court then it cannot be said that a possible view has not been taken, in the facts and circumstances of the case. It cannot be said to be one, which is not based on the record, and is also perverse. Therefore, we would not think it proper to unsettle the findings of the trial court and convict the accused appellants under Section 302 and 341 IPC. Therefore, the State appeal deserves to be dismissed.

As regards the appeal of the accused appellants, we are informed that the accused appellants remained behind the bars for sufficiently long period, i.e. Heera Ram from 29.08.84 to 12.02.85, Sahi Ram from 05.09.84 to 12.02.85, and Sohan Ram from 01.09.84 to 27.09.86 and we , therefore, deem it proper that the period already undergone, would be sufficient to meet the ends of justice. Thus, with this slight observation, affecting the findings of the trial court, we do not interfere in the appeal of the accused persons as well.

Accordingly, both the appeals, as filed by the State and

the accused appellants, are liable to be dismissed and are dismissed , with the modification as indicated herein above.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George